11 U.S.C. § 1141(d)(1)
26 U.S.C. § 6672

In re Price/McGinnis Case No. 387-34705-P11
Price/Mcginnis v. IRS Adv. # 91-3060
1/7/92 Judge Perris unpublished

The IRS assessed a nondischargeable "100% penalty" against the debtor under 26 U.S.C. § 6672. At issue was whether the postpetition interest on that debt was discharged by the order of confirmation. The court held that the postpetition interest was part of the nondischargeable debt.

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In re:	)	Case No. 387-34705-P11
	)	
JENNIFER PRICE/MCGINNIS,	)	
	)	
Debtor.	)	
_____	)	
	)	
JENNIFER PRICE/MCGINNIS,	)	Adv. No. 91-3060
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM OPINION AND
	)	ORDER ON CROSS-MOTIONS
UNITED STATES OF AMERICA,	)	FOR SUMMARY JUDGMENT ON
by and through its INTERNAL	)	COUNT THREE OF THE
REVENUE SERVICE.	)	COMPLAINT
	)	
Defendant.	)	
_____	)	

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon cross-motions for summary judgment on count three of plaintiff's complaint.

BACKGROUND

Plaintiff, the debtor herein, filed a complaint against

defendant in February of 1991, seeking a declaration that she was not liable for tax amounts defendant charged her for after confirmation of her Chapter 11 plan. Counts one and two of the complaint allege that she is not liable for the tax amounts on the grounds that defendant agreed to waive collection of those amounts, or is now estopped from collecting them. The issues raised in counts one and two of the complaint are not presently before the Court. Count three of the complaint alleges that the discharge granted to plaintiff under § 1141(d)(1) relieved her of liability for interest which accrued on allowed pre-petition claims between the petition date and the effective date of her plan. The cross-motions for summary judgment presently at issue involve this discharge issue. The issue of whether the disputed tax amounts have been discharged is a core matter as defined in 28 U.S.C. § 157.

FACTS

The facts relevant to count three of the complaint are not in dispute. Plaintiff's bankruptcy case was commenced on July 8, 1987, by the filing of an involuntary petition under Chapter 7. On October 28, 1988, plaintiff filed a voluntary petition under Chapter 11, and an order for relief was entered under Chapter 11. Defendant timely filed a proof of claim in plaintiff's case asserting various pre-petition income tax and "100% penalty" liabilities under 26 U.S.C. § 6672. Defendant

later withdrew all of its claims except for the two 100% penalty liabilities involved in this proceeding. The first was a 100% penalty for a tax period ending on June 30, 1984, in the amount of $74,027.67, plus $2,100.13 in pre-petition interest. The second was a 100% penalty for a tax period ending on December 31, 1984, in the amount of $62,821.42. These claims were allowed against the estate without objection by plaintiff.

Plaintiff confirmed a plan of reorganization on August 13, 1990. The plan provided for full payment of the two 100% penalty liabilities, plus post-effective date interest. On September 12, 1990, plaintiff tendered the amount of amount of $133,959.22 to defendant. This amount was $5,000.00 short of fully satisfying the 100% penalty claims. Defendant subsequently billed plaintiff for the balance still owing on the 100% penalties, plus the sum of $32,141.92 of interest. The bulk of the interest charged by defendant represented interest accrued under 26 U.S.C. §§ 6601 et seq., on the 100% penalties between the dates of July 8, 1987 (the date plaintiff's case was commenced) and August 13, 1990 (the date her plan was confirmed). Defendant claims this interest constitutes a nondischargeable liability of plaintiff. Plaintiff claims that the post-petition interest was discharged under § 1141(d)(1).

DISCUSSION

I conclude that under the rationale of Bruning v.

United States, 376 U.S. 358 (1963), the postpetition interest is part of the nondischargeable debt. It is settled in this district that Bruning (an Act case) remains valid under the Code. In re Woodward, 113 B.R. 680, 684 (Bankr. D. Or. 1990). The square holding of Bruning was that "post-petition interest on an unpaid tax debt not discharged by § 17 remains, after bankruptcy, a personal liability of the debtor." The court reasoned that

> one would assume that Congress, in providing that a certain type of debt should survive bankruptcy proceedings as a personal liability of the debtor, intended personal liability to continue as to the interest on that debt as well as to its principal amount. . . . In most situations, interest is considered to be the cost of the use of the amounts owing a creditor and an incentive to prompt repayment and, thus, an integral part of a continuing debt. Thus, logic and reason indicate that post-petition interest on a tax claim excepted from discharge by § 17 of the Act should be recoverable in a later action against the debtor personally, and there is no evidence of any congressional intent to the contrary.

In so holding, the Supreme Court rejected some of the same arguments raised by the debtor in this case. The debtor in Bruning, like the debtor in this case, contended that the failure to discharge postpetition interest impaired the debtor's fresh start. However, the Bruning court determined that the interest of financing government overrode the fresh start policy of the Code where nondischargeable taxes (and interest thereon) were concerned. The Bruning court rejected the argument, also raised

here, that specific provisions prohibiting the inclusion of postpetition interest in a claim require that such interest be deemed discharged, even if the underlying debt was not discharged.

While Bruning was decided in the context of a Chapter 7 discharge, the decisions under the Act extended that rule to reorganization cases. See, e.g. In re Johnson Electrical Corporation, 442, F.2d 281 (2nd Cir. 1971); Eby v. U.S., 456 F.2d 923 (3d Cir. 1972). The only Code case which I have been able to locate dealing with the dischargeability of postpetition interest on nondischargeable debts in Chapter 11 is In re Cline, 100 B.R. 660 (Bankr. W.D. N.Y. 1989). Cline also came to the conclusion that, based upon Bruning, the interest must be deemed nondischargeable.

The legislative history cited by plaintiff fails to persuade me that Congress intended to overrule Bruning in the context of Chapter 11 discharges. Congress may be presumed to have been aware of the Bruning decision when it enacted the Code. Had Congress disapproved of Bruning, it could have unequivocally overruled the case by explicitly providing for the discharge of postpetition interest on nondischargeable taxes. Congress chose not to do so. The legislative history cited by Plaintiff is not definitive enough to convince me that Bruning and its rationale no longer retain vitality.

The case of In re Mark Anthony Const., Inc., 886 F.2d 1101 (1989), supports the government's position. The issue in Mark Anthony was the priority to be accorded postpetition interest on postpetition taxes which qualified as an administrative expense. The court, quoting from Bruning, held that postpetition interest was entitled to the same priority as the postpetition taxes under the rule that "in the bankruptcy context, interest is generally considered 'an integral part of a continuing debt.'" Id. at 1101.

In conclusion, the debtor's arguments, while well presented, are insufficient to convince me that I may abandon the reasoning of Bruning and the extension of that rationale to Chapter 11 cases. Accordingly, the debtor's motion for summary judgment on the dischargeability of postpetition interest must be denied, and defendant's motion allowed.

_____
Elizabeth L. Perris
Bankruptcy Court Judge

cc: Victor Van Koten
Jeffrey Wong